

900 KAR 11:010. Medical review panels.

RELATES TO: KRS 216C.010, 216C.030, 216C.040, 216C.050, 216C.060, 216C.070, 216C.080, 216C.090, 216C.100, 216C.110, 216C.120, 216C.160, 216C.170, 216C.180, 216C.200, 216C.210, 216C.220, 216C.230

STATUTORY AUTHORITY: KRS 194A.050(1), 216C.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS Chapter 216C establishes the framework and general requirements for medical review panels in Kentucky and KRS 216C.040(3) requires the cabinet to establish the filing fee that shall accompany each proposed complaint filed with a medical review panel. This administrative regulation establishes the requirements for medical review panels in accordance with KRS Chapter 216C.

Section 1. Definitions. (1) "Claimant" means a patient who is pursuing a malpractice or malpractice-related claim against a health care provider.

(2) "Defendant" means the health care provider or providers against whom a complaint is filed.

(3) "Derivative claim" means a claim included in the description of a derivative claim within the KRS 216C.010(7) definition of "patient".

(4) "Health care provider" is defined by KRS 216C.010(4).

(5) "Licensing agency" means a licensure board that licenses health care providers.

(6) "Patient" is defined by KRS 216C.010(7).

(7) "Proposed complaint" or "complaint" means the documentation required by Section 4(1) of this administrative regulation.

Section 2. Application Process for Prospective Panel Chairperson. (1) To apply to serve as chairperson of a medical review panel, an attorney shall complete and submit to the Cabinet for Health and Family Services, Medical Review Panel Branch, Form MRP-001, Application to Serve as Chairperson of a Medical Review Panel.

(2) The name of each attorney who submits a Form MRP-001 shall remain on the list of attorneys required by KRS 216C.070(8) until the:

(a) Attorney notifies the cabinet that the application is withdrawn; or

(b) Cabinet receives notification that the attorney is no longer licensed to practice law in Kentucky.

Section 3. Identification of Prospective Panelists. (1) The cabinet shall request each licensing agency to provide a current list of all health care providers who:

(a) Are licensed by that agency;

(b) Are natural persons; and

(c) Hold a valid, active license to practice in his or her profession in Kentucky.

(2) The list provided by the licensing agency shall include each licensee's:

(a) Name;

(b) Mailing address;

(c) Business address;

(d) Type of license; and

(e) If applicable, known specialty fields.

Section 4. Proposed Complaints and Filing Fee. (1) A proposed complaint:

(a) May be filed on Form MRP-002;

(b) Shall include:

1.a. The name and current mailing address, phone number, and if known, email address of each named party; and

b. For each named defendant, the name, current mailing address, phone number, and if known, email address of the person authorized to receive summons under the Kentucky Rules of Civil Procedure on behalf of that named defendant;

2. The name and current mailing address, phone number, and email address of the claimant's attorney, if retained;

3. Identification of the claimant, including:

a. If the claimant is the individual who received or should have received health care from a health care provider and the patient's date of birth; or

b. If the claimant is pursuing a derivative claim, a description of that derivative claim, including the name and birth date of the individual who received or should have received health care from a health care provider, and the reason that the claimant is pursuing the claim on that person's behalf;

4. A description of the malpractice and malpractice-related claims against each named health care provider, including:

a. The nature of the patient's injury;

b. The appropriate standard of care with which each defendant was expected to comply;

c. The actions each defendant took or failed to take that caused the defendant's failure to comply with the appropriate standard of care; and

d. How this failure caused or contributed to the claimant's injury;

5. The date of the alleged occurrence of malpractice;

6. The Kentucky Supreme Court district in which the case would be filed; and

7. The signature of the claimant or the claimant's counsel, if retained; and

(c) Shall not be filed against an unknown defendant. If a complaint is filed that names an unknown defendant, the cabinet shall return the complaint to the claimant or claimant's attorney to:

1. Completely remove the unknown defendant from the proposed complaint; or

2. Replace the unknown defendant with an identified defendant.

(2) Except as provided by Section 14 of this administrative regulation, each proposed complaint shall be accompanied by a filing fee as required by this subsection.

(a)1. Except as provided by subparagraph 2. of this paragraph, the amount of the filing fee shall include:

a. A base amount of \$125; and

b. An additional amount of twelve (12) dollars for each defendant to cover the costs of service of process.

2. If service of process is not completed because a valid address was not provided by the claimant in the complaint, as required by subsection (1)(b)1. of this section, the claimant shall pay an additional twelve (12) dollars for each subsequent attempt at service of process.

(b) A fee required by paragraph (a) of this subsection shall be:

1. In the form of a check or money order; and

2. Payable to the Kentucky State Treasurer.

(3) Medical records shall not be submitted with the complaint. Medical records received by the cabinet shall be returned or destroyed.

(4)(a) Except as provided by Section 14 of this administrative regulation, the proposed complaint and required filing fee shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street,

5W-A(MRP), Frankfort, Kentucky 40621.

(b) Upon receipt of the proposed complaint and the required filing fee, the cabinet shall:

1. Issue Form MRP-003, Acknowledgement of Complaint Filing, to the claimant; and
2. Assign a case number in the format of "MRP-(four (4) digit calendar year)-(four (4) digit sequential number)".

(c) The cabinet shall:

1. Serve a copy of the proposed complaint on each defendant as required by KRS 216C.050, which requires service on a person authorized to receive summons under the Kentucky Rules of Civil Procedure; and

2. Include Form MRP-004, Cabinet Letter to Party re Filing of Proposed Complaint.

(5) Within ten (10) days after completion of service on each defendant, determined in accordance with KRS 216C.050, the cabinet shall email Form MRP-005, Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection, to all parties to notify them:

(a) Of the date service on all defendants was completed; and

(b) Regarding the panel chairperson selection process established by KRS 216C.070.

(6)(a) An inquiry about the medical review panel process may be submitted via e-mail to mrp@ky.gov.

(b) A proposed complaint and the required filing fee shall not be submitted via e-mail.

Section 5. Representation by Counsel. (1) If the complaint is filed by counsel on behalf of a claimant, or if notification is received that the claimant has later become represented by counsel, all subsequent notices and information for the claimant shall be sent to the identified counsel unless notification is received that the claimant has obtained different counsel or is no longer represented by counsel.

(2) If an appearance is made by counsel for a defendant, all subsequent notices and information for the defendant shall be sent to the identified counsel unless notification is received that the defendant has obtained different counsel or is no longer represented by counsel.

Section 6. Document Templates. (1)(a) The cabinet shall use the document templates listed in subsection (3) of this section for the documents' established purposes.

(b) The panel chairperson shall communicate the information required by KRS Chapter 216C by using either:

1. The document templates listed in subsection (4) of this section; or

2. A document developed by the panel chairperson that communicates the required information.

(c) Except for the items required by KRS 216C.040(2), 216C.050, 216C.110, and 216C.230 to be mailed, a required or recommended communication shall be mailed or emailed to the appropriate recipient.

(2) If the document template includes variable information that is complaint-specific or references information to be determined by the cabinet or chairperson, that information shall be completed as part of the document's preparation.

(3)(a) Form MRP-006, Cabinet Letter to Parties re Chairperson Striking Panel, shall be sent by the cabinet to notify the parties of the five (5) attorneys whose names were drawn pursuant to KRS 216C.070(2).

(b) Form MRP-007, Cabinet Letter to Party re Strike of Chairperson, shall be used by the cabinet to facilitate the selection of the chairperson pursuant to KRS 216C.070(3).

(c) Form MRP-008, Cabinet Letter to Party re Cabinet Strike of Chairperson, shall be used by the cabinet pursuant to KRS 216C.070(5)(b).

(d) Form MRP-009, Cabinet Letter to Chairperson re Selection to Serve, shall be used by the cabinet to send the notification required by KRS 216C.070(6) of the name of the chairperson to the chairperson and to each party.

(e) Form MRP-010, Cabinet Letter to Chairperson re List of Potential Panelists, shall be used by the cabinet to send the chairperson the list of potential panelists required by KRS 216C.080 and 216C.090(1), which is:

1. Based on the list obtained from the applicable licensing agency as required by Section 3(1) and (2) of this administrative regulation; and

2. To the extent reasonably possible, limited to the professions and specialty fields, if any, of one (1) or more of the defendants.

(f) Form MRP-011, Cabinet Letter to Parties re Acknowledgement by Chairperson, shall be used by the cabinet to notify each party that the chairperson has acknowledged the appointment to serve as chairperson.

(4)(a) Form MRP-012, Chairperson Letter to Parties re Panel Striking Lists, may be used by the panel chairperson to provide the lists required by KRS 216C.090(1) to the parties.

(b) Form MRP-013, Chairperson Letter to Party re Strike, may be used by the panel chairperson to remind a party of the need to strike to comply with KRS 216C.090(3).

(c) Form MRP-014, Chairperson Letter to Panel Members re Selection to Serve, may be used by the panel chairperson to explain to the first two (2) panel members the process established in KRS 216C.090(2) for selecting the third panel member and to provide an overview of their responsibilities as panel members.

(d) Form MRP-015, Chairperson Letter to Third Panel Member re Selection to Serve, may be used by the panel chairperson to notify the third panel member of that person's selection pursuant to KRS 216C.090(3) and to provide an overview of the person's responsibilities as a panel member.

(e) Form MRP-016, Authorization to Release Medical Records and Protected Health Care Information, may be used by the panel chairperson to request that a claimant authorize the release of medical records.

(f) Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, may be used by the panel chairperson as authorized by Section 9(4)(b) of this administrative regulation, to provide the notifications required by KRS 216C.110(1) and (2), and to outline the schedule for submission of evidence in accordance with KRS 216C.160(6) and (7).

(g) Form MRP-018, Chairperson Letter to Panel re Evidence, may be used by the panel chairperson as authorized by Section 9(6)(b) of this administrative regulation, to:

1. Identify and transmit to the panel members the evidence to be considered by the medical review panel in accordance with KRS 216C.160; and

2. Determine potential dates for the panel to convene to:

- a. Discuss the evidence;

- b. Reach a decision; and

- c. Issue a report.

(h) Form MRP-019, Chairperson Letter to Parties re Panel Hearing, may be used by the panel chairperson to notify the parties that the panel plans to convene a hearing to question counsel or ask the parties to answer specific questions, in accordance with KRS 216C.170(2)(e).

(i) Form MRP-020, Administrative Subpoena, may be used by the panel chairperson to issue an administrative subpoena as authorized by KRS 216C.160(4).

Section 7. Oath for Panel Members. (1) Before considering any evidence or deliberating

with other panel members, each member of the medical review panel shall submit written evidence of taking an oath, which shall read as follows: "I swear or affirm under penalties of perjury that I will well and truly consider the evidence submitted by the parties; that I will render my opinion without bias, based upon the evidence submitted by the parties; and that I will not communicate with any party or representative of a party before rendering my opinion, except as authorized by law."

(2) Form MRP-021, Oath for Panel Members, shall be provided to each panelist by the chairperson either prior to submission of the evidence to the panel members or at the same time the panel members receive the evidence.

(3) The written oath shall be signed by each panelist, witnessed, and returned to the panel chairperson for inclusion in the official record of the panel.

Section 8. Duties of Chairperson. In accordance with KRS 216C.060(3), the chairperson shall:

(1) Rule on motions tendered by the parties to:

(a) Expedite the panel's review of a proposed complaint; and

(b) Allow for the parties to make full and adequate presentation of related facts and authorities; and

(2) Use the Kentucky Rules of Civil Procedure as a reference, including for guidance on whether to add a third party for purposes of having all interested and relevant parties before the medical review panel.

Section 9. Submission to the Panel and Other Parties. (1) Evidence submitted pursuant to KRS 216C.160(6) by a claimant shall be submitted to the panel chairperson and all other parties.

(2) Evidence submitted pursuant to KRS 216C.160(7) by a defendant shall be submitted to the panel chairperson and all other parties.

(3) Evidence shall not be submitted by a claimant or defendant directly to a panel member.

(4)(a) The panel chairperson shall send written notification to the parties to provide the:

1. Email addresses to use to submit evidence in electronic form, as authorized by KRS 216C.160(1); and

2. Mailing addresses to use to submit evidence in written form, as authorized by KRS 216C.160(1).

(b) The panel chairperson may use Form MRP-017, Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions, as a template for the written notification required by paragraph (a) of this subsection.

(5) If evidence is submitted in written form, the mailing to the panel chairperson shall include four (4) copies of each item.

(6) The chairperson:

(a) Shall send all submitted evidence to each panel member, as required by KRS 216C.160(5); and

(b) May use Form MRP-018, Chairperson Letter to Panel re Evidence, as a template for the written notification required by paragraph (a) of this subsection.

Section 10. Panel Decision. (1) Each member of the medical review panel shall use Form MRP-022, Panel Member's Opinion, to issue that panel member's opinion as to each defendant, as required and limited by KRS 216C.180. One (1) copy of Form MRP-022 shall be completed by each panel member for each defendant. The completed forms shall be submitted to the panel chairperson.

(2)(a) In accordance with KRS 216C.180(3), if two (2) or more members of the panel agree on the conclusion, that conclusion shall be the opinion of the panel and the chairperson shall complete Form MRP-023, Chairperson's Report of Panel's Final Opinion.

(b) If there is not agreement by two (2) or more members as required by KRS 216C.180(3), the panel chairperson shall instruct the panel members to continue deliberations.

(3) The chairperson shall provide a copy of the completed Form MRP-023, the supporting Form MRP-022 submitted by each panel member, and the time and expense reports required by Section 11 of this administrative regulation to:

(a) Each party;

(b) Each medical review panel member; and

(c) The Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 11. Payment for Panel Members and Chairperson. (1)(a) Except as provided in paragraph (b) of this subsection, each panel member shall submit to the chairperson of the medical review panel a completed Form MRP-024, Time and Expense Report for Panel Members, with Form MRP-022, Panel Member's Opinion.

(b) If a proposed complaint is settled or withdrawn prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230, each panel member shall submit to the chairperson of the medical review panel, within three (3) business days of notification of the settlement or withdrawal, a completed Form MRP-024, Time and Expense Report for Panel Members.

(c) The Form MRP-024 shall include the log of the panel member's time spent on that medical review panel and the panel member's reasonable travel expenses.

(d) The chairperson shall review each of the forms submitted by the panel members and shall sign the form to verify that the form has been reviewed and appears to be an accurate representation of the panel member's time and expense report.

(2)(a) The chairperson shall complete Form MRP-025, Time and Expense Report for Chairperson, and submit it with the panel's report as required by subsection (3) of this section.

(b) The Form MRP-025 shall include the log of the chairperson's time spent on that medical review panel and the chairperson's reasonable travel expenses.

(3)(a) Pursuant to KRS 216C.220(3), the chairperson shall submit the four (4) completed time and expense reports to the appropriate party or parties with:

1. Form MRP-023, Chairperson's Report of Panel's Final Opinion, as required by KRS 216C.180 and Section 10 of this administrative regulation; or

2. Form MRP-026, Panel's Final Report Following Notification of Settlement or Complaint Withdrawal, if a report will not be issued because the complaint was settled or withdrawn prior to receipt of the medical review panel's report.

(b) The completed time and expense reports shall also be sent by the chairperson to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4)(a) Except as provided by paragraph (b) of this subsection, payment shall be made as required by KRS 216C.220(4).

(b) If the parties agreed to settle or withdraw the proposed complaint prior to receipt of the medical review panel's report pursuant to KRS 216C.180 and 216C.230:

1. Payment shall be made as agreed to by the parties and stated on Form MRP-027, Notification of Settlement or Withdrawal; or

2. If the Form MRP-027, Notification of Settlement or Withdrawal, does not address payment of the fees and expenses:

a. If there is one (1) claimant and one (1) defendant, the claimant and defendant shall each pay fifty (50) percent of the fees and expenses; and

b. If there are multiple claimants or defendants, the fees and expenses shall be split equally between the parties, with:

- (i) The claimants collectively responsible for fifty (50) percent of the fees and expenses; and
- (ii) The defendants collectively responsible for fifty (50) percent of the fees and expenses.

(5)(a) A party required to pay the fees and expenses shall submit payment by check or money order:

1. To the medical review panel's chairperson, who shall distribute the payments to each panel member; and

2. Within thirty (30) days of the date of the panel's report or the date of the settlement.

(b) If full payment is not received by the deadline established in paragraph (a)2. of this subsection, interest shall accrue:

- 1. From the date of the panel's report or the date of the settlement; and
- 2. At the current Kentucky post-judgment interest rate.

Section 12. Settlements or Withdrawals. (1) Upon settlement or withdrawal of a matter pending before a medical review panel prior to receipt of the medical review panel's opinion pursuant to KRS 216C.180 and 216C.230, the claimant and defendant shall complete and file Form MRP-027, Notification of Settlement or Withdrawal, as required by subsection (2) or (3) of this section.

(2) If the settlement or withdrawal occurs before the chairperson is selected, the claimant and defendant shall file Form MRP-027 with the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(3)(a) If the settlement or withdrawal occurs after the chairperson is selected and before the opinion is issued by the medical review panel, the claimant and defendant shall file Form MRP-027 with the chairperson.

(b) The chairperson shall:

1. Notify the panel members that the complaint has been settled or withdrawn and shall request submission of Form MRP-024, Time and Expense Report for Panel Members, for payment as established in Section 11(4) of this administrative regulation; and

2. Forward a copy of the Form MRP-027, Notification of Settlement or Withdrawal, to the Cabinet for Health and Family Services, Medical Review Panel Branch.

(4) Settlement with, or withdrawal regarding, one (1) or more, but not all, claimants or defendants shall not conclude the medical review panel's obligation to review the remaining claims.

Section 13. Sample Form for Waiver of Medical Review Panel Process. (1) To waive the medical review process, a claimant and all parties shall complete:

(a) Form MRP-028, Parties' Agreement to Waive the Medical Review Panel Process; or

(b) Written documentation, without use of Form MRP-028, that provides evidence of the agreement required by KRS 216C.030.

(2) A waiver of the medical review process may be filed pursuant to KRS 216C.030 without previously filing a proposed complaint and filing fee as required by Section 4(1) and (2) of this administrative regulation.

(3) A copy of the Form MRP-028 or the alternative written documentation shall be filed with the Cabinet for Health and Family Services, Medical Review Panel Branch.

Section 14. Indigent Claimants. (1) If a claimant is unable to pay the filing fee established by Section 4(2) of this administrative regulation and the twenty-five (25) dollar fee for selecting a panel chair established by KRS 216C.070(2), the claimant shall file Form MRP-029, Attestation

of Indigency. The proposed complaint and the Form MRP-029, Attestation of Indigency, shall be delivered or mailed by registered or certified mail to the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621.

(2) The cabinet secretary or designee shall consider the following factors in evaluating a request that is filed pursuant to subsection (1) of this section:

- (a) Income;
- (b) Source of income;
- (c) Property owned;
- (d) Number of motor vehicles owned and in working condition;
- (e) Other assets;
- (f) Outstanding obligations;
- (g) The number and ages of the claimant's dependents; and
- (h) The poverty level income guidelines compiled and published by the United States Department of Labor.

(3) The cabinet secretary or designee shall issue Form MRP-030, Accompanying Order, within two (2) business days either waiving the fees or denying the request.

(4) If the fees are waived:

- (a) The filing date for the complaint shall be the date the order is issued;
- (b) The required filing fee shall be zero dollars; and
- (c) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation.

(5) If the fees are not waived:

- (a) The filing date for the complaint shall be the date the filing fee established by Section 4(2)(a) of this administrative regulation is received by the cabinet; and
- (b) The cabinet shall proceed with the process established in Section 4(4)(b) of this administrative regulation once the fee is paid.

(6) Payment for the medical review panel chairperson and members, which is required by KRS 216C.220, shall not be waived.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form MRP-001, "Application to Serve as Chairperson of a Medical Review Panel", June 2017;
- (b) Form MRP-002, "Proposed Complaint", September 2017;
- (c) Form MRP-003, "Acknowledgement of Complaint Filing", June 2017;
- (d) Form MRP-004, "Cabinet Letter to Party re Filing of Proposed Complaint", June 2017;
- (e) Form MRP-005, "Cabinet Notification to the Parties Regarding Service of the Complaint and Panel Chairperson Selection", June 2017;
- (f) Form MRP-006, "Cabinet Letter to Parties re Chairperson Striking Panel", September 2017;
- (g) Form MRP-007, "Cabinet Letter to Party re Strike of Chairperson", June 2017;
- (h) Form MRP-008, "Cabinet Letter to Party re Cabinet Strike of Chairperson", June 2017;
- (i) Form MRP-009, "Cabinet Letter to Chairperson re Selection to Serve", June 2017;
- (j) Form MRP-010, "Cabinet Letter to Chairperson re List of Potential Panelists", June 2017;
- (k) Form MRP-011, "Cabinet Letter to Parties re Acknowledgement by Chairperson", June 2017;
- (l) Form MRP-012, "Chairperson Letter to Parties re Panel Striking Lists", September 2017;
- (m) Form MRP-013, "Chairperson Letter to Party re Strike", September 2017;

- (n) Form MRP-014, "Chairperson Letter to Panel Members re Selection to Serve", September 2017;
 - (o) Form MRP-015, "Chairperson Letter to Third Panel Member re Selection to Serve", June 2017;
 - (p) Form MRP-016, "Authorization to Release Medical Records and Protected Health Care Information", September 2017;
 - (q) Form MRP-017, "Chairperson Letter to Parties re Formation of Panel and Schedule of Submissions", March 2018;
 - (r) Form MRP-018, "Chairperson Letter to Panel re Evidence", June 2017;
 - (s) Form MRP-019, "Chairperson Letter to Parties re Panel Hearing", September 2017;
 - (t) Form MRP-020, "Administrative Subpoena", June 2017;
 - (u) Form MRP-021, "Oath for Panel Members", June 2017;
 - (v) Form MRP-022, "Panel Member's Opinion", June 2017;
 - (w) Form MRP-023, "Chairperson's Report of Panel's Final Opinion", June 2017;
 - (x) Form MRP-024, "Time and Expense Report for Panel Members", June 2017;
 - (y) Form MRP-025, "Time and Expense Report for Chairperson", June 2017;
 - (z) Form MRP-026, "Panel's Final Report Following Notification of Settlement or Complaint Withdrawal", June 2017;
 - (aa) Form MRP-027, "Notification of Settlement or Withdrawal", June 2017;
 - (bb) Form MRP-028, "Parties' Agreement to Waive the Medical Review Panel Process", June 2017;
 - (cc) Form MRP-029, "Attestation of Indigency", September 2017; and
 - (dd) Form MRP-030, "Accompanying Order", September 2017.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law:
- (a) At the Cabinet for Health and Family Services, Medical Review Panel Branch, 275 East Main Street, 5W-A(MRP), Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
 - (b) Online at <http://mrp.ky.gov>. (44 Ky.R. 472, 763, 956; eff. 11-15-2017; TAm 3-28-2018.)